IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1149 OF 2000

M/s.Western India Oil Distributing)
Co. Ltd., Mumbai)..Appellants

V/s.

Asst.Commissioner of Income-tax & Ors)..Respondents

Mr.A.K.Jasani for the appellants.

Mr.Suresh Kumar for the respondents.

Coram : F.I.Rebello & R.S.Mohite,JJ

Date : 28.01.2009.

PC

1. Appeal was admitted on the following question :-

. "Whether on the facts and circumstances of the case and in law, the Appellate Tribunal was justified in holding that the unpaid amount of rent of Rs.7,28,467/- was not allowable as a deduction when computing taxable income for the assessment year 1988-89 ?

2. The said amount consists of a sum of Rs.2,82,816/- was the liability for rents of BPT Wadala and the sum of Rs.4,45,651/- as the enhanced rental liability of northern railway.

3. In so far as unclaimed amount of BPT, an additional affidavit has been filed pointing out that the issue of fixation of rent of BPT land was an issue before the Supreme Court and pursuant to

the judgment of the Supreme Court the BPT has fixed the rent. As per the affidavit, the rent has not been paid.

4. In our opinion, it would be appropriate that this issue be answered by the Tribunal after giving both the parties an opportunity. In the light of the above the impugned order to that extent is set aside. The matter is remanded in so far as question no.2 to the extent of a sum of Rs.2,82,816/- to the Tribunal for deciding the same afresh in terms of the appeal filed before this Court.

5. Appeal disposed off accordingly. Needless to say on the finding recorded by the Tribunal the appellant would be entitled to allowance of the rent in terms of the Supreme Court directions.

(R.S.Mohite,J) (F.I.Rebello,J)